

E-Filed 4/14/2010

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

ART GONZALES and MARY GONZALES,
Individually and as Successors-in-Interest of the
Estate of M.G.,

Plaintiffs

V.

LUCILLE PACKARD CHILDREN'S HOSPITAL,
STANFORD HOSPITAL AND CLINICS,
BAXTER HEALTHCARE CORP., BAXTER
INTERNATIONAL, INC., SCIENTIFIC PROTEIN
LABORATORIES, INC., CHANGZHOU SPL
COMPANY, LTD., AMERICAN CAPITAL LTD.,
B. BRAUN MEDICAL INC., TYCO
HEALTHCARE GROUP, LP, MEDEFIL, INC.,
AND DOES 1 through 100, inclusive,

Defendants.

Case Number C 09-5539 JF

CORRECTED ORDER¹ GRANTING
MOTION TO STAY PROCEEDINGS
PENDING TRANSFER BY THE
JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION; AND
SEVERING AND REMANDING
CLAIMS AS TO DEFENDANTS
LPCH AND SHC²

[re: doc. nos. 22, 57, 79]

Art Gonzales and Mary Gonzales ("Plaintiffs") are the parents and successors-in-interest

¹ This disposition is not designated for publication and may not be cited.

² In an order dated March 29, 2010, the Court granted the motion to stay proceedings and the alternative motion to sever and remand the state-law claims. (Doc. No. 79.) However, the Court’s order mistakenly stated that the state-law claims would be remanded to Santa Clara Superior Court. As Plaintiffs originally brought this action in Merced Superior Court, the Court should have remanded the state-law claims to that court. This order amends the March 29 order to correct this error.

1 of the estate of Martina Gonzales (“M.G.”), a minor, who passed away on July 29, 2008.
2 Defendants Lucille Packard Children's Hospital (“LPCH”) and Stanford Hospital and Clinics
3 (“SHC”) (the “Medical Provider Defendants”) provided M.G.’s medical care during her
4 admission for surgery on July 27, 2008 to treat a congenital heart defect. Defendants Baxter
5 International, Inc., B. Braun Medical Inc., Tyco Healthcare Group, LP, Medefil, Inc., Scientific
6 Protein Laboratories, Inc., LLC, American Capital, Ltd., and Changzhou Spl Co. Ltd. (the
7 “Pharmaceutical Defendants”) are corporations engaged in the design, manufacture, and
8 distribution of the drug heparin sodium (“heparin”).

9 On July 28, 2009, Plaintiffs filed the instant action in the Merced Superior Court, alleging
10 that M.G. received contaminated heparin, which caused her death. *See Compl.* ¶¶ 100-103. The
11 Pharmaceutical Defendants removed the case to this Court on the ground that the claims involve
12 substantial questions of federal law. Plaintiffs assert state-law claims against the Pharmaceutical
13 Defendants for strict liability, breach of implied and express warranty, negligence, fraudulent
14 misrepresentation, fraudulent concealment, and negligent infliction of emotional distress.
15 Plaintiffs assert separate claims against the Medical Provider Defendants for medical negligence
16 and negligent infliction of emotional distress.³ *See Stipulation and Order re Dismissal of Causes*
17 *of Action Against LPCH and SHC (filed 1/15/10).*

18 Presently before the Court are competing motions filed by the two Defendant groups. On
19 January 22, 2010, the Medical Provider Defendants filed a motion to remand, or in the
20 alternative, to sever the separate claims against them. They argue that Plaintiffs’ claims as to
21 them raise no substantial federal question. The Pharmaceutical Defendants contend that federal
22 jurisdiction clearly exists as to them and that the issues raised in the instant litigation share
23 common questions of fact and law with other heparin-related lawsuits. On February 2, 2010, the
24 Pharmaceutical Defendants re-noticed a previously filed motion to stay the instant proceedings
25 pending a final determination by the Judicial Panel on Multidistrict Litigation (“MDL Panel”) as

27 ³ The Medical Provider Defendants and Plaintiffs have stipulated as to which Defendants
28 are being called to answer which causes of action.

1 to whether this action should be transferred to the Northern District of Ohio for consolidated
2 proceedings with other heparin-related cases.⁴ They therefore oppose the Medical Provider
3 Defendants' motion to remand the entirety of the instant action and request that the Court issue a
4 stay until the MDL Panel makes a final determination.

5 On March 25, 2010, the MDL Panel considered whether this case should be transferred to
6 the Northern District of Ohio. Oral argument on the instant motions occurred the following day.
7 It is apparent from that argument that neither Plaintiffs nor the Pharmaceutical Defendants
8 oppose the Medical Provider Defendants' alternative motion to sever.⁵ Because all parties agree
9 that the claims against the Medical Provider Defendants are state-law claims that are distinct
10 from those against the Pharmaceutical Defendants, the Court will grant the alternative motion to
11 sever and remand the action as to them to the Merced Superior Court.

12 As to the claims against the Pharmaceutical Defendants, a stay at this juncture will
13 preserve judicial economy and facilitate uniform treatment of heparin-related cases by the MDL
14 Panel. *See Rivers v. Walt Disney Co.*, 980 F. Supp. 1358, 1360 (C.D. Cal. 1997) (holding that a
15 stay is appropriate when it serves the interests of judicial economy and efficiency). "The decision
16 to grant or deny a temporary stay of proceedings pending a ruling on the transfer of the matter to
17 the MDL court lies within this Court's discretion." *Conroy v. Fresh Del Monte Produce, Inc.*,
18 325 F. Supp. 2d 1049, 1053 (N.D. Cal. 2004) citing *Landis v. North Am. Co.*, 299 U.S. 248, 254-
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20 ⁴ Prior to the events leading up to the instant action, the MDL Panel had consolidated
21 over 200 heparin-related actions in an MDL proceeding before Chief Judge Carr in the Northern
22 District of Ohio. *See In re Heparin Products Liability Litigation*, MDL No. 1953. On December
23 28, 2009, the MDL Panel issued a Conditional Transfer Order (CTO-29) provisionally
consolidating this case into the MDL proceeding. The Medical Provider Defendants have filed
objections to the CTO.

24 ⁵ Plaintiffs did not file papers in connection to the instant motions or appear at the
25 hearing. It also appears that Plaintiffs have not opposed transfer of the case to the MDL
26 proceeding. The Medical Defendants state only that Plaintiffs did not file a response brief to the
27 Medical Defendants' motion to vacate the CTO or alternatively to sever the claims, so "therefore
also admit that the claims against LPCH and SHC should be severed...." Medical Defs.' Opp'n to
Mot. To Stay Proceedings 6:3-7.

1 55 (1936); *Good v. Prudential Ins. Co. of Am.*, 5 F. Supp. 2d 804, 809 (N.D. Cal. 1998). Because
2 the MDL Panel is expected to issue a final decision shortly regarding the possible transfer and
3 consolidation of this case as to the Pharmaceutical Defendants and because the same
4 jurisdictional issues present here have arisen in other cases transferred to the MDL proceeding
5 and are likely to be addressed uniformly by the MDL Panel, issuance of a stay satisfies the
6 Court's interest in "avoiding duplicative litigation." *See Rivers*, 980 F. Supp. at 1360.

7 **ORDER**

8 Good cause therefor appearing, the motion to stay as to the Pharmaceutical Defendants
9 will be GRANTED pending a final determination on transfer by the Judicial Panel on
10 Multidistrict Litigation. The motion of the Medical Provider Defendants to sever and remand the
11 claims against them to the Merced Superior Court also will be GRANTED.

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14 IT IS SO ORDERED.

15 Dated: April 14, 2010



16 JEREMY FOGEL
United States District Judge